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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

SIOBHAN HAYES,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION A/K/A AMTRAK,  
a Federally chartered corporation,

and

BURLINGTON NORTHERN SANTA FE,  
LLC ("BNSF"), a Delaware Corporation,

Defendants.

Case No.: CV-22-13-GF-BMM

COMPLAINT – FEDERAL  
EMPLOYERS' LIABILITY ACT (45  
U.S.C. §51); NEGLIGENCE

JURY TRIAL DEMANDED

Plaintiff, Siobhan Hayes, by and through her attorney and for her Complaint against Defendants Amtrak and BNSF hereby alleges:

1.

At all relevant times, Defendants were licensed to do business in Montana as common carriers by railroad in interstate commerce. Defendant Amtrak is a national passenger rail service corporation with headquarters in Washington, D.C. Defendant BNSF is incorporated

in Delaware, with its headquarters in Fort Worth, Texas. Plaintiff, Siobhan Hayes (“Plaintiff” or “Siobhan”), is a resident of the State of Illinois, residing in Chicago, Illinois.

2.

Jurisdiction with respect to Amtrak is based on 45 U.S.C. § 56. Jurisdiction with respect to BNSF is based on 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000.

3.

Venue is proper within the District of Montana pursuant to 28 U.S.C. § 1391(b) as this claim arose in this judicial district, and within the Great Falls Division.

4.

At all times relevant to the claims herein Defendant BNSF owned, maintained, and controlled the track on which Plaintiff’s train, called the Empire Builder, was traveling when it derailed near Joplin, Montana on September 25, 2021.

5.

Plaintiff is a 42 year old mother of one. At all relevant times she was an employee of Amtrak. She was injured in the derailment.

6.

On February 24, 2009, Plaintiff was hired by Amtrak as an On-Board Services Train Attendant. Before her first trip with Amtrak, Plaintiff received minimal instruction and training on how to respond to a derailment or to protect herself from serious injury or death. She was employed by Amtrak on the date of the derailment.

7.

Although Amtrak trains have derailed in the past, often with loss of life, Amtrak never provided Plaintiff with any training in or on how to respond to a derailment, how to evacuate passengers, or how to protect herself and rescue passengers in a derailment.

8.

On September 25, 2021, Plaintiff was working as an On Board Services Attendant on Amtrak's Empire Builder which travels from Chicago to Seattle. The train consisted of two locomotives and ten passenger cars. On September 24, 2021, the Empire Builder departed from Chicago, Illinois heading toward Seattle. There were believed to be over 140 passengers and sixteen crew members.

9.

At all times pertinent in this Complaint, Empire Builder was traveling on tracks owned, operated, maintained, and controlled by Defendant BNSF Railway Company, including tracks across Montana. On September 25, 2021 the Amtrak train derailed near Joplin, MT. Three people were killed. Dozens of people were injured, including Plaintiff.

10.

When the Empire Builder derailed, the last four cars were violently thrown from the tracks and became airborne. The cars rolled and eventually landed on their sides.

12.

At the time of the derailment, Siobhan was in Coach 15, which was the second to last car of the train. She felt a hard, violent bump. She was ejected from her seat. Her head was violently slammed on the ceiling. As she was descending back down to her seat she

experienced another violent jolt. She was thrown hard against the wall next to her, striking the right side of her body. She ended up landing on one of the passengers on top of a window.

13.

Siobhan sustained severe and life-altering injuries when the coach car derailed and flipped onto its side. She was taken by ambulance to Liberty Medical Center in Chester, MT where she was initially diagnosed with a mid-shaft right humerus fracture. Medical personnel were unable to manage her injuries in Chester. Plaintiff's arm was placed in a splint, and she was transported to Pondera Medical Center/Logan Health in Conrad, Montana. There she was also diagnosed with a right ankle avulsion fracture of her medial malleolus. Siobhan also suffered head and traumatic brain injuries for which she is still being treated. She will continue to endure emotional and psychological harm.

14.

Upon returning home, Plaintiff was diagnosed with Post-Traumatic Stress Disorder, Anxiety, and Depression. She is continuing to treat for her injuries and has undergone and will undergo surgeries.

15.

This derailment and the death and destruction it caused was preventable. The September 25, 2021 derailment of Empire Builder is another in a long list of devastating and fatal train derailments caused by the negligence and carelessness of Defendants Amtrak and BNSF. Each have demonstrated a continuing disregard for the safety of their employees and passengers.

16.

The investigations led by the National Transportation Safety Board (“NTSB”) have confirmed that the entities involved in this tragedy are Amtrak and BNSF. Their conduct is being examined along with extensive examination of the tracks and train cars involved in the accident. The NTSB has also interviewed Amtrak and BNSF personnel, including Siobhan.

17.

The NTSB has confirmed that a BNSF freight train traveled through this section of the railway tracks shortly before the derailment, and that BNSF personnel had last inspected the tracks in the area of the derailment as recently as two days before the accident.

18.

Defendant BNSF’s ownership and operation of the railroad lines originated in Chicago’s Union Station and included tracks on which Empire Builder began its trip and where the derailment occurred.

19.

Defendants Amtrak and BNSF derived a financial benefit through their ownership and operation of the railroad tracks and railroad cars which carried the Empire Builder and Plaintiff.

20.

Amtrak’s Empire Builder runs along rail lines owned, operated, and controlled by BNSF, including through Montana.

21.

Amtrak and BNSF entered into a joint venture or other arrangement whereby Amtrak’s Empire Builder train was permitted to operate and run along BNSF’s rail lines.

22.

Amtrak and BNSF formed this joint venture with the common purpose of profiting from cross-country rail traffic.

23.

Amtrak and BNSF share in the profits and losses of this joint venture.

24.

Amtrak and BNSF jointly manage and control this joint venture, namely the travel of the Empire Builder train along BNSF's transnational rail line.

#### FIRST CLAIM FOR RELIEF

Federal Employers Liability Act (FELA) - 49 U.S.C. §51, et seq.

25.

Plaintiff incorporates all that is alleged above. She further alleges as follows.

26.

Under the FELA, Amtrak owed Plaintiff non-delegable duties, including to provide her and other employees with a safe place to work. Plaintiff's injuries were caused, in whole or in part, from the acts and omissions of Amtrak in failing to provide Plaintiff with safe tools, safe equipment and a safe place to work, in one or more of the following particulars:

- a. Amtrak operated the Empire Builder at a dangerous speed under the conditions;
- b. Amtrak failed to discover that the track was unsafe prior to the derailment;
- c. Amtrak failed to make the engines and cars safe for passengers and crew members;
- d. Amtrak failed to train its crew to safely respond in a derailment; and

- e. Amtrak failed to act reasonably under the circumstances in violation of non-delegable duties imposed by the FELA.

SECOND CLAIM FOR RELIEF Negligence - BNSF

27.

Plaintiff incorporates all that is alleged above. She further alleges as follows.

28.

Plaintiff's injuries were due in whole or in part to the acts and omissions of BNSF, which were negligent in one or more of the following particulars:

- a. BNSF failed to discover a defect in its track which caused or contributed to the derailment on September 25, 2021;
- b. BNSF failed to warn Amtrak of the defects in its track which caused or contributed to the derailment on September 25, 2021;
- c. BNSF failed to repair defects in the track which caused or contributed to the derailment on September 25, 2021;
- d. BNSF failed to institute a slow order for the track on which the Amtrak train derailed; and
- e. BNSF failed to act reasonably under the circumstances.

29.

As a result of the negligence of the Defendants, and each of them, Plaintiff suffered injuries to her head, brain, teeth, leg, and right hand/arm/shoulder requiring surgeries and ongoing medical care. Both Defendants negligence caused or contributed to Plaintiff's injuries. As a result of her injuries, alleged herein, Plaintiff has incurred economic losses, among them lost income, lost pension benefits and medical bills and will permanently suffer

economic losses in the future. Plaintiff has suffered from great pain, anguish and distress caused by her injuries and will continue to suffer from pain and distress in the future.

WHEREFORE, Plaintiff prays the Court to enter Judgment against the Defendants for her damages and costs and disbursements incurred herein, including but not limited to interest as allowed by law.

JURY DEMAND: Plaintiff hereby demands a jury trial.

DATED: February 16, 2022.

James T. Towe  
TOWE & FITZPATRICK, PLLC

/s/ James T. Towe

James T. Towe

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***ATTORNEY FOR PLAINTIFF***